IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/07/2003

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.No.1613 of 2002
and
CMP No.16957 of 2002

1. Palaniammal W/o Nallusami
2. Vasanthamani
3. Mahalingam .. Petitioners

-Vs-

1. Palaniswami
2. Karuppannan
3. Palaniammal W/o Ramasami
4. Suppayee
5. Rajeswari .. Respondents

This civil revision petition is preferred under Sec.115 of The Code of Civil Procedure against the order and decree dated 30.9.2002 and made in I.A.No.37 of 2002 in A.S.No.34 of 2001 on the file of the Additional District Judge cum Chief Judicial Magistrate, Karur.

!For Petitioners : Mrs.Krishnaveni
for Mr.T.R.Rajaraman

^For Respondents : Mr.Valliappan
for M/s.Sarvabhauman
Associates

:ORDER

What is challenged herein is an order of the learned Additional District Judge cum Chief Judicial Magistrate, Karur dismissing an application filed by the petitioners herein for appointment of a handwriting expert to compare the signatures in the agreement of sale dated 19.8 .1981 marked as Ex.A2 and the signature in the receipt dated 30.1.84 marked as Ex.A4 along with the signatures in the admitted documents dated 30.1.84 marked as Ex.A3, on the basis of which the relief was sought for by the petitioners/plaintiffs.
2. It was a suit filed filed by the petitioners herein for specific performance seeking a direction to the respondents/defendants to execute a sale deed on the basis of an agreement of sale dated 19.8.81 and the receipt dated 30.1.84. The execution of those documents was flatly denied by the respondents/defendants. On trial, the suit by the revision petitioners was

dismissed. Aggrieved plaintiffs have brought forth an appeal in A.S.No.34 of 2001 pending on the file of the learned Additional District Judge. During the pendency of the appeal, the instant application seeking the appointment of an handwriting expert to compare the signatures found in Ex.A2 agreement and Ex.A4 receipt along with the admitted signatures found in the document under Ex.A3 was filed. On contest, the said application was dismissed. Aggrieved plaintiffs have brought forth this revision.

3. Arguing for the petitioners, the learned Counsel would submit that the lower Court has dismissed the application only on the ground of delay; that it is true that steps were not taken by the plaintiffs when the suit was pending before the trial Court, but a comparison was done by the trial Court invoking Sec.73 of the Evidence Act; that on comparison, the trial Court has accepted the defence, which grievance was ventilated before the first appellate forum, and hence, it was a fit case where a handwriting expert has got to be appointed to compare the signatures before the matter is heard by the first appellate forum.

4. Opposing the above contentions of the petitioners' side, the learned Counsel for the respondents would urge that the suit was filed in the year 1990; that even in the written statement, the execution of the agreement and the receipt was specifically denied by the defendants, but no steps were taken by the plaintiffs all along; that after trial, the trial Court has well compared the signature invoking Sec.73 of the Evidence Act; that when the appeal was filed by the aggrieved plaintiffs, they have not stated that it is a fit case for sending those documents for expert's opinion; that it was not only the case of delay, but it was a thorough lack of bonafide; that the lower Court has rightly dismissed the application, and hence it is a fit case where the order of the lower Court has got to be sustained.

5. After careful consideration of the rival submissions, the Court is of the view that it is a fit case where a handwriting expert has got to be appointed for the purpose of comparison of the signatures found in the agreement and the receipt marked as Exs.A2 and A4 respectively.

6. It was a suit for specific performance, based on a written agreement of sale. It is true that the execution of the said agreement and the receipt for payment of consideration marked as A-2 and A-4 respectively was flatly denied by the defendants. It is also true that no steps were taken by the plaintiffs' side for sending those documents for expert's opinion. In such circumstances, the trial Court invoking Sec.73 of the Evidence Act has compared the signatures. A perusal of the judgment of the trial Court would clearly indicate that the said comparison was not properly done. On the dismissal of the suit, the plaintiffs have brought forth an appeal, during the pendency of which the instant application has been filed. The Court is unable to notice any infirmity or illegality in filing such an application before the first appellate forum. Merely because of the reason that the trial Court has compared the admitted signature and the disputed signature invoking Sec.73 of the Evidence Act, there is no bar or ban for the first appellate Court sending the documents for canvassing the expert's opinion. Under such circumstances, an opportunity has got to be given for the comparison of the documents by a handwriting expert. The Court is unable to notice any lack of bonafide, but, there was delay. The Court is of the view that the delay that was caused in making such a request before the trial Court cannot be equated to the lack of bonafide. Therefore, it is a fit case where the delay has got to be

compensated by way of awarding reasonable costs along with a direction to the first appellate Court to dispose of the appeal within a stipulated time.

7. In the result, this civil revision petition is allowed, setting aside the order of the lower Court. I.A.No.37 of 2002 in A.S.No.34 of 2001 is allowed on condition that the petitioners/plaintiffs shall make payment of costs of Rs.3,000/- (Rupees three thousand) directly to the Counsel for the respondents/defendants, who is appearing in the appeal before the first appellate Court, within four weeks herefrom, failing which the application shall stand automatically dismissed. That apart, the lower appellate Court is directed to dispose of the appeal within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected CMP is closed.

Index: Yes
Internet: Yes

To:

The Additional District Judge
cum Chief Judicial Magistrate
Karur.

nsv/

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